

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

KEVIN BRIGGS,

Petitioner,

No. C 15-4355 NJV (PR)

vs.

ORDER OF DISMISSAL

WARDEN SPEARMAN,

Respondent.

Petitioner has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has also applied for leave to proceed in forma pauperis and consented to the jurisdiction of a Magistrate Judge.

BACKGROUND

Petitioner appears to be challenging a parole revocation from November 29, 2006. He argues that the legislation and injunction stemming from *Valdivia v. Brown*, 956 F. Supp. 2d 1125 (E.D. Cal. July 3, 2013), which provided inmates facing parole revocation with certain rights should be made retroactive to his 2006 hearing. He seeks a restoration of one year of credits and a removal of the violation from his record.¹

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet

¹ It appears that petitioner is currently incarcerated on a different underlying conviction because he also stated that he was convicted on August 2, 2013, for a different case number.

1 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An
2 application for a federal writ of habeas corpus filed by a prisoner who is in state custody
3 pursuant to a judgment of a state court must “specify all the grounds for relief available to
4 the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules
5 Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the
6 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”
7 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.
8 1970)). “Habeas petitions which appear on their face to be legally insufficient are subject
9 to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102,
10 1108 (9th Cir. 1996) (Schroeder, J., concurring).

11 **B. Analysis**

12 In addition to the underlying petition in this case, petitioner has filed a motion to stay
13 pending a ruling from the California Supreme Court. Before he may challenge either the
14 fact or length of his confinement in a habeas petition in this court, petitioner must present to
15 the California Supreme Court any claims he wishes to raise in this court. See *Rose v.*
16 *Lundy*, 455 U.S. 509, 522 (1982) (holding every claim raised in federal habeas petition
17 must be exhausted). The general rule is that a federal district court must dismiss a federal
18 habeas petition containing any claim as to which state remedies have not been exhausted.
19 *Id.*

20 A fully unexhausted federal habeas petition may not be stayed and must be
21 dismissed. See, e.g., *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) (holding that
22 a fully unexhausted petition may not be stayed and observing: “Once a district court
23 determines that a habeas petition contains only unexhausted claims, it need not inquire
24 further as to the petitioner's intentions. Instead, it may simply dismiss the habeas petition
25 for failure to exhaust.”); *Jones v. McDaniel*, 320 Fed. Appx. 784, 786 (9th Cir.2009)
26 (affirming the dismissal of a fully unexhausted petition and denial of a stay, because a
27 “*Rhines* stay is only available for a mixed habeas petition where at least some of the claims
28 have been exhausted, and none of [petitioner's] claims were exhausted”).

1 Because petitioner has presented an unexhausted petition, this case is dismissed
2 without prejudice and petitioner may refile when the claims are exhausted.

3 **CONCLUSION**

4 1. Petitioner's motion to proceed in forma pauperis (Docket No. 5) is **GRANTED**.

5 2. The motion to stay (Docket No. 2) is **DENIED**.

6 3. The petition is dismissed without prejudice and petitioner may refile when the
7 claims are exhausted. Because reasonable jurists would not find the result here debatable,
8 a certificate of appealability ("COA") is **DENIED**. See *Slack v. McDaniel*, 529 U.S. 473,
9 484-85 (2000) (standard for COA).

10 **IT IS SO ORDERED.**

11 Dated: October 22, 2015.



NANDOR J. VADAS
United States Magistrate Judge